LIBRARY
SUPREME COURT, U. S.

Office Supreme Court, U.S.
FILED
JAN 14 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. ~~64~~ 36

PUBLIC AFFAIRS ASSOCIATES, INC., Trading as
PUBLIC AFFAIRS PRESS, *Petitioner*

v.

VICE ADMIRAL HYMAN G. RICKOVER, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

STANLEY B. FROSH
1300 Connecticut Ave., N.W.
Washington 6, D. C.

HARRY N. ROSENFIELD
1735 De Sales Street, N.W.
Washington 6, D. C.
Attorneys for Petitioner

C. AY PRINTING, WASHINGTON 11, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Constitutional provisions and statutes involved	2
Statement of the case	3
Reasons for granting the writ	5
I. Conflicts between Courts of Appeals	5
II. Conflict with "applicable decisions of this court"	8
A. Definition of "official duty"	8
Respondent's speeches and his official duty	11
B. "Official duty" of policy-making official	14
III. Unsettled questions of Federal Law	15
A. Meaning of "Government publication" unsettled	16
B. Decision below is impossible to effectuate	17
C. Decision below fails to stem evasions of copyright law	18
IV. Unsettled Constitutional questions	22
A. Freedom of Press guarantees people's right to know	22
B. Right of access to Government publications	24
C. Decision of Court Below abridges Freedom of Press	27
Special request	29
Conclusion	29
Appendices	30
A. Decision of the Court Below	30
B. Judgment of the Court Below	48
C. Press Release Samples	49
D. List of Respondent's speeches issued as official press releases	51

	Page
E. U. S. Army Copyright Practice	53
F. Official Military Histories Copyrighted by Army Officers	54
G. Publications of U. S. Naval Institute	56
H. U. S. Air Force Copyrighting Practice	57
I. Copyrighting Practice in Atomic Energy	58
J. Atomic Energy Commission's Copyrighting Practices	59
K. Congressional Copyrighting Practice	60

CITATIONS

CASES:

A.F.L. v. Swing, 312 U.S. 321	26
Associated Press v. U.S., 326 U.S. 1	23, 24
Barr v. Matteo, 360 U.S. 564	9, 10, 14, 24
Baxley v. U.S., 134 F. 2d 938	26
Bridges v. California, 314 U.S. 252	26
Commissioner v. Tower, 327 U.S. 280	7
Cooper v. O'Connor, 99 F. 2d 135, *cert. denied* 305 U.S. 643	10, 11
First Trust Co. of St. Paul v. Minn. Historical Society, 146 F. Supp. 652 *aff'd sub nom.* U.S. v. First Trust Co. of St. Paul, 251 F. 2d 686	7
Glass v. Ickes, 117 F. 2d 273, *cert. denied* 311 U.S. 719	10
Gregoire v. Biddle, 117 F. 2d 579, *cert. denied* 339 U.S. 949	10
Grosjean v. Amer. Press Co., 297 U.S. 233	26
Guinn v. U.S., 238 U.S. 347	26
Hoffman v. Halden, 268 F. 2d 280	10
Lane v. Wilson, 307 U.S. 268	26
Lovell v. Griffin, 303 U.S. 444	24
McGrain v. Daugherty, 273 U.S. 135	28
Maryland v. Baltimore Radio Show, Inc., 338 U.S. 912	17
Milwaukee Publication Co. v. Burleson, 255 U.S. 407	26
Preble v. Johnson, 275 F. 2d 278	10
Rice v. Sioux City Cemetery, 349 U.S. 70	16
Sawyer v. Crowell, 46 F. Supp. 471, *aff'd* 142 F. 2d 497, *cert. denied* 323 U.S. 735	6

Page

Spalding v. Vilas, 161 U.S. 483 8, 11
Speiser v. Randall, 357 U.S. 513 26
U.S. v. Birdsall, 233 U.S. 223 9, 10
U.S. v. First Trust Co. of St. Paul, 251 F. 2d 686 6, 7
U.S. v. Jones, 204 F. 2d 745, *cert. denied* 346 U.S. 854 12
U.S. v. MacDaniel, 7 Pet. 1 10
U.S. v. Rumely, 345 U.S. 41 26
Winters v. New York, 333 U.S. 507 21

STATEMENTS BY MEMBERS OF THIS COURT AND RULES OF COURT:

Harlan, *Manning the Dikes* . . . , 13 Record of the N.Y.C.B.A. 541 (1958) 5, 7
Hughes, *Address*, 20 A.B.A.J. 341 5
Letter, Sen. Rep. 711, 75th Cong., 1st Sess., p. 38 16
Vinson, *Address to American Bar Association*, 69 S.Ct.V 5, 17
Rules of the Supreme Court, Rule 19, 1(b) 5, 7, 8, 15

CONSTITUTION, STATUTES, AND EXECUTIVE ACTIONS:

Constitution, First Amendment, Second clause 2, 22
Copyright Law 17 U.S.C. 8 2, 16
Printing Law 44 U.S.C. 58 2, 16
President: Executive Order No. 10561, 3 C.F.R. 71 18
Solicitor General of the United States: Briefs before this Court 10, 11, 24, 25
Berger, *Copyright in Government Publications*, Copyright Office, Study No. 21C 16, 17, 19, 21
Department of the Navy: General Regulations, Act 1252 3
Navy Civilian Personnel Instructions #290 18
U.S. Civil Service Commission: Federal Personnel Manual, R-1-40 18

LEGAL ARTICLES OR TREATISES:

Gunnels, *Copyright Protection for Writers Employed by the Federal Government*, 1960 WASH. U. L. Q. 182 6, 7, 16
Hanson, *The Two Bulwarks of Liberty: A Free Press and An Independent Judiciary*, 41 A.B.A.J. 217 23

Page

Pilpel, *But Can You Do That?*, PUBLISHERS WEEKLY, Dec. 26, 1960 7

Recent Cases, 73 HARV. L. REV. 1219 22

Recent Developments, *Speeches Written by Public Official Are Copyrightable by Him Even Though Related to Content of His Assigned Duties*, 60 COLUM. L. REV. 398 7, 14

ROBERTSON AND KIRKHAM, JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES (Wolfson & Kurkland ed. 1957) §350 16

Stiefel, *Piracy in High Places—Government Publications and the Copyright Law*, 24 GEO. WASH L. REV. 423 16

Yankwich, *Legal Implications of, and Barriers to, The Right to Know*, 40 MARQ. L. REV. 33 25, 26

MISCELLANEOUS:

Dallas (Texas) *Morning News*, Dec. 7, 1959 26

6 WRITINGS OF JAMES MADISON (1906 ed) 398 23

New York Times, May 31, 1957 24

PATTERSON, FREE SPEECH AND A FREE PRESS 121 23

Rickover:

Speeches quoted 12, 13

Counsel quoted 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No.

PUBLIC AFFAIRS ASSOCIATES, INC., Trading as
PUBLIC AFFAIRS PRESS, *Petitioner*

v.

VICE ADMIRAL HYMAN G. RICKOVER, *Respondent*

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia

---

Public Affairs Associates, Inc., trading as Public Affairs Press, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit, in case No. 15,463, is set forth hereinafter as Appendix A. The judgment of the court below is set forth as Appendix B.

The opinion of the United States District Court for the District of Columbia is reported at 177 F. Supp. 601, and is set forth in the Brief for Appellant and Appendix Below, at p. 54. (This Appendix served as the Joint Appendix below.)

JURISDICTION

The judgment of the Court of Appeals was entered in the above-entitled action on October 20, 1960.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

Where speeches by a high-ranking and policy-making Federal official, which deal with subjects connected with and growing out of his official responsibilities, were prepared on Government time and with Government personnel and facilities, were publicly delivered while he was on official duty, and were widely distributed as official press releases on Government letterhead without disclaimer of official character, may such public official:

1. copyright such speeches as private property, or are they "Government publications" under the Printing Law or "publications of the United States Government" under the Copyright Law?

2. arbitrarily bar or limit access of the press to such speeches under the First Amendment to the Constitution?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Copyright Law, 17 U.S.C. 8, provides: "No copyright shall subsist . . . in any publication of the United States Government, or any reprint, in whole or in part, thereof . . ." This provision of law dates from 1909, 35 Stat. 1075, § 7.

2. The Printing Law, 44 U.S.C. 58, provides in part that " . . . No publication reprinted from such stereotype or electrotype plates ["from which any Government publication is printed"] and no other Government publication shall be copyrighted." This provision of law dates from 1895, 28 Stat. 608, § 52.

3. The First Amendment to the Constitution, so far as pertinent, provides that "Congress shall make no law . . . abridging the freedom of speech or of the press; or the right of the people . . . to petition the Government for a redress of grievances."

STATEMENT OF THE CASE

The facts are as follows:

1. Petitioner is an educational publisher, located in Washington, D. C.; it specializes in pamphlets and books on national affairs.

2. Respondent is a Vice Admiral, one of 26 top officials in the entire United States Navy. During the pertinent period he was on active duty in the Navy Department as Assistant Chief of the Bureau of Ships for Nuclear Propulsion and also as Assistant Director for Naval Reactors, Division of Reactor Development, United States Atomic Energy Commission. He is generally credited with a major role in achievement of America's first atomic submarine as well as the nation's first commercial atomic power plant at Shippingport, Pennsylvania.

3. Between October 20, 1955 and October 27, 1958, Admiral Rickover delivered 22 speeches on matters directly related to or growing out of his official duties.

4. The texts of all these 22 speeches were official publications. As shown in Plaintiff's Exhibit Below 6B thirteen were officially issued by the U.S. Atomic Energy Commission and nine by the U.S. Department of Defense as official and sanctioned Government press releases on Government letterhead, with official notice thereon that Government information officers were available to discuss and provide further information on the speech or its contents. Copies were also officially furnished to the press and made available to the public at large. At the time of delivery and distribution no restriction whatsoever was placed upon their publication, in whole or in part, nor was there any indication whatsoever that they were not official statements.

For this Court's convenience, photocopies of the title pages of two such speeches are reproduced in Appendix C.

5. The General Regulations of the U. S. Navy, Article 1252, Par. 3, require that all non-official publications by all persons in the Naval Service shall bear "a statement to the effect that the opinions or assertions contained therein are the private one

of the writer and are not to be construed as official or reflecting the views of the Navy Department or the naval service at large." (Exhibit Below, No. 14. See Brief for Appellant and [Joint] Appendix, p. 28 and opinion below).

6. Respondent admits that he did not make such disclaimer in any of the 22 speeches. (Respondent's Brief Below, p. 2) The Trial Court found that "some of them dealt with ideas that the Admiral developed in connection with his activities as a Naval officer", 177 F. Supp. 601. 602.

7. Respondent made no application for copyright registration on any of these 22 speeches until December 1, 1958, *after* all of them had been delivered and official press releases had been officially distributed. When furnished to the Copyright office the speeches were identical with the original releases in all respects but one: they did not reveal their original government imprimaturs as shown in Exhibit C.

8. On or about October 29, 1958, the Petitioner requested Respondent for copies of certain of these speeches in order to quote from them. Therefore, but prior to December 1, 1958, Respondent adjured the Petitioner not to quote from such speeches.

9. Respondent delivered four speeches after December 1, 1958. Contrary to earlier practice, these were submitted to the Copyright Office for registration prior to their delivery.

10. A list of the 26 speeches, their delivery dates, and the United States Government agencies which published them as press releases appears in Appendix D. Among these 22 speeches were the following titles:

"Metallurgy in Atomic Power"
"Nuclear Power and the Navy" (twice)
"Lead Time and Military Strength"
"Nuclear Power—Challenge to Industry"
"The Challenge of Nuclear Power"
"The Naval Revolution"
"The Meaning of the Nautilus' Power Voyage"

Subsequent speeches included "The Shippingport Atomic Power Station: Lessons from its Operation."

11. At all times when he delivered the speeches the Respondent was on official duty and had not taken leave for personal purposes. His travel to the location of the speech was paid for by the United States Government.

12. No question is involved of secrecy or control of information for reasons of national security or because of executive privilege.

REASONS FOR GRANTING THE WRIT

This is an important case. It involves issues of national concern, unresolved construction of Federal statutes of wide application, substantial conflicts among the various Courts of Appeals, refusal of the Court of Appeals below to follow applicable determinations of law by this Court, and unsettled Constitutional issues of Freedom of the Press.

This is a case "of *general* importance", in the terms of Mr. Justice Harlan.[1] It involves what Chief Justice Hughes called "controversy of importance with respect to legal principles".[2] Its result will, in the words of Chief Justice Vinson, "have immediate importance far beyond the particular facts and parties involved" and affect "tremendously important principles upon which are based the plans, hopes, and aspirations of a great many people throughout the country."[3]

I. Conflict between Courts of Appeals (Rule 19, 1(b), first clause).

The Courts of Appeals for the Second and Eighth Circuits have rendered decisions involving private ownership or copyright of documents alleged to have been prepared by a Federal

---

[1] *Manning the Dikes—Some Comments on the Statutory Certiorari Jurisdiction and Jurisdictional Statement Practice of the Supreme Court of the United States*, 13 THE RECORD OF THE N.Y.C.B.A. 541, 557 (1958).

[2] Address to American Law Institute, May 10, 1934, 20 A.B.A.J. (1934).

[3] Address to the American Bar Association, *Work of the Federal Courts*, Sept. 7, 1949, 69 S. Ct. V, at VI.

employee in the course of official duty. In each such case these Courts of Appeals adopted a rule of law in conflict with the rule of law adopted below here. Such rulings of the Second and Eighth Circuits, if applied here, would yield an opposite result on the determinative legal issue of whether Respondent's speeches were made in the course of official duty.

Sawyer v. Crowell Publishing Company,[4] from the Second Circuit, held that a map produced by a Federal employee could not be copyrighted by him in his private capacity because it was produced in the course of his official duties. The inconsistency between *Sawyer* and the decision below is very aptly described in a perceptive and scholarly discussion of the very case now before this Court by Mr. Donald L. Gunnels.[5] The "basic question raised was the same", he says, in both cases. The courts differ in "the degree or amount of connection required between the material and an employee's paid job functions to warrant a denial of copyright protection":

"The courts in *Rickover* and *Sherrill* believed an employee to be entitled to copyright protection in any material not produced by him as *the specific thing* which his duties required him to produce. The court in the *Sawyer* case felt that an employee has no claim to protection in any material he produces which has a direct relationship in subject matter to his paid job activities. It should also be noted that the *Sawyer* case also attached weight to the fact that Government time and facilities were utilized in producing the material whereas the *Rickover* case considered these factors to be of no material consequence whatever."[6]

Likewise in conflict with the decision below is *United States v. First Trust Co. of St. Paul*, from the Eighth Circuit, which

---

[4] 46 F. Supp. 471 (D.C.S.D.N.Y. 1942), *aff'd* 142 F. 2d 497 (2d Cir. 1944), *cert. denied* 323 U.S. 735 (1944).

[5] *Copyright Protection for Writers Employed by the Federal Government*, 1960 WASH. U. L. Q. 182. (The note dealt with the District Court's decision; on this issue , the Court of Appeals confirmed the District Court's ruling.)

[6] *Id.* at 180. The views of the court below on the use of Government facilities are stated in footnote 20 of its opinion.

involved the original rough notes for the formal diary of the Lewis and Clark Expedition. There the United States claimed that such notes had been made in the course of official duty; the court held otherwise on the following basis: "These notes had no relation to the affairs of the [Indian] Agency. They were not made in connection with Clark's conduct of the Agency" [and therefore were not made in the course of his official duties][7]

The chasm between the court below and the conflicting decisions of the Second and Eighth Circuits can be seen from the very fact that the court below did not even believe it necessary to attempt to distinguish between the speeches pertaining to the Respondent's official duties and those which possibly did not.[8]

Thus, two other Courts of Appeals use different legal approaches "on the same matter," approaches that are in direct conflict and would cause opposite results from the court below on the same facts.[9] It is respectfully submitted, therefore, that this Petition is clearly within the first clause of Rule 19, 1(b), and that it comes within the reach of this Court's ruling in *Commissioner v. Tower*, 327 U.S. 280, 284 (1946): "Because of the various views expressed as to controlling legal principles in the decisions . . . , we granted certiorari . . . ". The present case involves a conflict between Courts of Appeal "that can be effectively resolved by the Supreme Court alone".[10]

---

[7] First Trust Co. of St. Paul v. Minn. Historical Society, 146 F. Supp. 652,668 (D.C. Minn. 1956), *aff'd sub nom.* U.S. v. First Trust Co. of St. Paul, 251 F. 2d 686,691 (8th Cir. 1958).

[8] See Gunnell, *op. cit. supra* note 5, at 187.

[9] *Id.* at 188. See also Pilpel, *But Can You Do That?*, PUBLISHERS' WEEKLY, Dec. 26, 1960, p. 31 (" . . . the speeches dealt with subject matter with which the Admiral was officially concerned"); Finding of Trial Court below, noted in Paragraph 6 of "Statement of the Case", *supra*, Recent Developments, *Speeches Written by Public Official Are Copyrightable by Him Even Though Related to Content of his Assigned Duties*, 60 COLUM. L. REV. 398 (1960).

[10] Mr. Justice Harlan, *op. cit. supra* note 1, at 552.

II. Conflict with "applicable decisions of this court" (Rule 19, 1(b), fourth clause).

a. Definition of "official duty".

The decision below is in conflict with a whole line of "applicable decisions of this court" on the capstone legal issue decisive in the instant case: the legal criterion for determining when a high-ranking and policy-making Federal official acts within the scope of his official duties. The Court below ruled on this question as follows:

"It cannot be properly said, . . . that a governmental official who speaks or writes of matters with which he is concerned as an official is by the very fact of being such an official barred from copyright on his productions. If they are statements called for by his official duties or explanations as guides for official action, they are barred from copyright . . . We hold that none of these papers is a government publication."

The "applicable decisions of this court" appear in cases dealing with the liability of Federal officials for actions pursued in the course of their official duty. The issue arises when a Federal officer or employee makes a statement, writes a letter, or issues a press release which might be actionably libelous to anotl. . party. The typical ruling in such cases is that if the statement is made by a Federal officer in the course of his official duty, he is immune from the otherwise applicable liability for defamation. Thus, the basic legal question in this line of cases is: When is the Government officer or employee acting in his official capacity and within the scope of his official duties?

The underlying legal issue in the instant case is, thus, identical with the underlying legal issue in the Government libel cases, and therefore the rulings in the defamation cases are "applicable decisions of this court" under the fourth clause of Rule 19(1)(b).

In the leading case on the subject, *Spalding v. Vilas*, 161 U.S. 483, 498 (1896), Mr. Justice Harlan said that the test of official duty was whether it involved "action having more

or less connection with the general matters committed by law to his control or supervision".

This Court's latest relevant decision is *Barr v. Matteo*, 360 U.S. 564 (1959) where the question was whether press releases by the Acting Director of the Office of Rent Stabilization were within the scope of his duties and therefore "privileged" against a suit for libel. In finding that these press releases were within the scope of the official duties this Court ruled:

"It would be an unduly restrictive view of the scope of the duties of a policy-making executive official to hold that a public statement of agency policy in respect to matters of wide public interest and concern is not action in the line of duty. That petitioner was not *required* by law or by direction of his superiors to speak out cannot be controlling in the case of an official of policy-making rank, for the same considerations which underlie the recognition of the privilege as to acts done in connection with a mandatory duty apply with equal force to discretionary acts at those levels of government where the concept of duty encompasses the sound exercise of discretionary authority" (at 575).

In a concurring opinion, Mr. Justice Black took special note that "the subject matter discussed in the release was germane to the proper functioning" of the government agency concerned. He continued: "It is enough for me here that the press release was neither unauthorized nor plainly beyond the scope of Mr. Barr's official business, but instead related more or less to general matters committed by law to his control and supervision. See Spalding v. Vilas . . . " (at 577).

In *Barr v. Matteo*, this Court cited with approval two former decisions from other fields, in which the underlying issue was the same. *United States v. Birdsall*, 233 U.S. 223 (1914) involved an employee's improper receipt of monies.

Mr. Justice Hughes set forth this Court's criterion of "official action" as follows: "To constitute it official action, it was not necessary that it should be prescribed by statute it was sufficient that it was governed by a lawful requirement of the Department under whose authority the officer was acting . . . Nor

was it necessary that the requirement should be prescribed by a written rule or regulation. It might also be found in an established usage which constituted the common law of the Department and fixed the duties of those engaged in its activities . . . In numerous instances, duties not completely defined by written rules are clearly established by practice . . . " (at 230-31).

A similar rule was earlier enunciated in *United States v. MacDaniel*, 7 Pet. 1, 14 (1833), which was a suit by the Government for recovery on settlement of a Navy official's accounts.

The Courts of Appeals for the Second,[11] Seventh,[12] and Tenth Circuits[13] have also taken positions on this same underlying legal issue which are in direct conflict with the decision below in defamation and other cases, thus following the ruling of this Court in *Birdsall* and *MacDaniel* that the above noted definition of "official duty" is a general rule of law and is not limited to defamation cases.

As a matter of fact, there is serious question as to whether the court below has been consistent with its own previous decisions on this subject arising in malicious prosecution actions[14] as well as in Government defamation.[15]

The position taken before this Court by the U.S. Government on the very issue of the scope of a Federal employee's official duties is both pertinent and instructive. In *Barr v. Matteo, supra*, the Government's Petition for a Writ of Certiorari, at pages 11-12, stated:

---

[11] Gregoire v. Biddle, 177 F. 2d 579, 581 (2d Cir. 1949) (per L. Hand, J.), *cert. denied* 339 U.S. 949 (1950).

[12] U.S. v. Jones, 204 F. 2d 745, 754 (7th Cir. 1953) *cert. denied* 346 U.S. 854 (1953) (not a libel case).

[13] Preble v. Johnson, 275 F. 2d 275, 278 (10th Cir. 1960).

[14] Cooper v. O'Connor, 99 F. 2. 135, 139 (C.A.D.C. 1938), *cert. denied* 305 U.S. 643 (1938). This case was cited with approval in Hoffman v. Halden, 268 F. 2d 280, 300 (9th Cir. 1959).

[15] Glass v. Ickes, 117 F. 2d 273 (C.A.D.C. 1940), *cert. denied* 311 U.S. 718 (1941).

"In *Spalding v. Vilas*, supra, this Court held that, in order to receive the protection of immunity, it was not necessary that the official be under a positive legal duty to act, but it was sufficient that the general legal authority for the act existed—*i.e.*, that the statements have 'more or less connection with the general matters committed by law to his control or supervision.' 161 U.S. at 498-9."

The Government's Brief on the merits interpreted the *Spalding Case* as follows:

" . . . it is not necessary that the official be under a positive legal duty to act; it is sufficient that general legal authority for the act existed . . . So far as official communications are concerned, the doctrine of Spalding v. Vilas has not been limited to heads of executive departments but has been applied to government officials of lesser rank." (at p. 12).

"And in Cooper v. O'Connor, 99 F. 2d 135 (CADC), certiorari denied, 305 U.S. 643, the court ruled that in order for an act to be within the scope of official duties it was not necessary that it be prescribed by a statute or specifically directed or requested by a superior officer" (at p. 17).

The Solicitor General claimed, in terms quite apposite to the instant case, the court below had adopted "an artificially restrictive test of 'line of duty', one which fails to take into account the nature of the officer's functions and the circumstances necessitating and justifying his decision . . . " (Brief, p. 16).

b. Respondent's speeches and his official duty.

Did Admiral Rickover's speeches have "more or less connection with the general matters committed by law to his control or supervision"? For a high-ranking Vice Admiral who is Assistant Chief of the Navy's Bureau of Ships for Nuclear Propulsion, and also Assistant Director of the Atomic Energy Commission's Division of Reactor Development, it scarcely needs any argument that the following speeches are connected

with "general matters" under his "control or supervision":

"Metallurgy in Atomic Power"
"Nuclear Power and the Navy"
"Nuclear Power—Challenge to Industry"
"The Naval Revolution"
"The Meaning of the Nautilus' Polar Voyage"
"The Shippingport Atomic Power Plant: Lessons from its Operation".

In what way are the Respondent's so-called "educational" speeches connected with his official concerns?

The following are excerpts from Admiral Rickover's speech entitled "Education: Our First Line of National Defense", delivered on December 11, 1958 [16]:

"Though I have never taken a course in 'education', *I have been running schools for years.* Everyone in my atomic power group has taken a hand at some time or other at teaching what he has first had to teach himself about the new science of engineering. *We have set up schools for our own engineers and for industrial people, as well as for the officers and men who will operate our nuclear ships. In our post-graduate program we teach the exacting requirements of reactor design, construction and management.*"

Respondent is a distinguished engineer of the U.S. Government. His educational concerns, he says, come out of this very fact:

"As any engineer would, I noticed many years ago that Russia, with her tremendous new educational program . . . was gaining momentum at a time when we were losing momentum. This shows up in the constant lengthening of lead time in this country . . . As an engineer, engaged in pushing through a new engineering project, it has long been obvious to me that we cannot shorten lead times . . . unless we find ways to remove the many roadblocks . . . Nearly all those roadblocks are caused by people whose education has not pre-

[16] Plaintiff's Exhibit No. 9, before court below, pp. 16-20, 22-23. (*Emphasis added*)

pared them for the extremely difficult problems which arise when we seek to progress beyond present levels of technology . . . "

What did Admiral Rickover, as a government official "engaged in pushing through a new engineering project", think was necessary to do his job better? "Our nuclear engineers had to be more broadly and more thoroughly educated . . . " Lacking this proposed remedy, the present situation directly affects his duties in carrying out his official responsibilities:

"It is no exaggeration to say that a major part of our time has been taken up with fighting for higher levels of performance which are resisted because their necessity is not understood . . . Resistance comes from . . . an inflexibility which has its roots in an educational system that does not prepare young people for life in our constantly changing world".

Respondent makes it crystal-clear that he is talking about *difficulties confronting him in recruiting his own official staff for his own official assignments:*

"I have interviewed more than two thousand young men in the last twelve years, all top men in their college class. My naval reactor engineering group presently numbers about 150. Since the men who came to see me had already passed through a number of previous interviews where all but the best were eliminated, it is evident that those who could not meet the requirements of the nuclear power project—and hence inferentially of any new development project—vastly outnumbered those who qualified."

"This experience made a deep impression on me. *It led me directly to a study of why our educational system produces so few men who are qualified to do the work we must do if we are to progress.* I found that our schools are the greatest 'cultural lag' we have today".

Your Petitioner does not wish to be misunderstood in this connection. Respondent is to be commended for his broad vision of the responsibilities placed upon him by the enormously important tasks committed "to his control or supervision". But he cannot have it both ways. If while perform-

ing his duty he acts as if education is part of his job[17] then he cannot elsewhere validly contend that education is solely an avocational interest. The speeches involved in this litigation are all clearly within the scope of duty committed to Respondent's "control or supervision."

c. Official duty of policy-making public official.

In still another respect, moreover, the court below failed to follow "applicable decisions of this court". We have already quoted from Mr. Justice Harlan's opinion for the Court in *Barr* concerning the broader interpretation that must be given to the scope of duties of "a policy-making executive official", 360 U.S. at 575. In the same decision he also stated that "the higher the post, the broader the range of responsibilities and duties, and the wider the scope of discretion, it entails" (p. 573).

The Respondent is and was a highly important official of two major agencies of the Government, both of which are engaged in a wide range of engineering and educational activities, both internally and externally. In the course of his general duties with the Navy Department and the Atomic Energy Commission, the Respondent participates in the formulation and execution of policies and programs critically affecting the present and the future of the Nation. In virtually everything he does he necessarily, by virtue of his high-level policy-making post, has a wide exercise of discretion.[18] The higher the official the higher the trust placed in him, the higher his responsibilities, and the broader the interpretation of his scope of official duties and responsibilities.

Whatever may be the relevance of the "works-for-hire"

[17] Counsel for Respondent said before the Trial Court: "The Admiral's interest in the subject of education . . . was stimulated by his experience in the Navy. In recruiting scientific personnel for his work on nuclear propulsion no one can say that he is not interested in improving the Naval Service . . . ", Brief for Appellant and [Joint] Appendix, Below, pp. 47-48.

[18] See Recent Developments, *op. cit.* supra note 9, at 400.

doctrine, adopted by the court below, for private employment, or even in low-level and purely ministerial public employment, it clearly does not apply to high-level and policy-making positions such as that occupied with such distinction by the Respondent. In addition to the broad substantive scope of their responsibilities, such high-level public officials have an implicit duty[19] to enlighten the American people through public statements on matters "having more or less connection with the general matters committed by law to his control or supervision."

It is respectfully submitted that the Court of Appeals in the instant case has seriously narrowed and misconstrued the "applicable decisions of this court", as well as the doctrine accepted by the United States for its own determination when an individual Government official is acting within the scope of his official duties.

This Court has stated that a Government employee's official duty includes "action having more or less connection with the general matters" entrusted to that employee. This Court has also ruled that no specific requirement is necessary to do the particular act involved and that no specific direction from a superior is necessary to qualify such action as official. Contrary to such rulings of the Court, however, the Court of Appeals below specifically rejected this test[20] and required that the action be "called for by his official duties" or that they be "explanation as guides for official action". Therefore the decision below is "in conflict with applicable decisions of this court."

III. Important questions of federal law not settled by this Court (Rule 19. 1(b), third clause).

The interpretation of Federal statutes is a customary basis-

[19] *Id.*

[20] The court below said: "It cannot be properly said . . . that a governmental official who speaks or writes of matters with which he is concerned as an official is by the very fact of being such an official barred from copyright on his productions."

for granting a writ of certiorari where novel, unsettled and important questions are presented,[21] especially where their authoritative solution by this Court is a matter of major importance to the American public as a whole.[22] In such instances, said Chief Justice Hughes, "review by the Supreme Court is thus in the interest of the law, its appropriate exposition and enforcement, not in the mere interest of the litigants."[23]

a. Meaning of "Government publication" is unsettled.

The terms "Government publication" (in the Printing Law, 44 U.S.C. 58) and "publication of the United States Government" (in the Copyright Law, 17 U.S.C. 8) have been on the statute books since 1895 and 1909, respectively, but they are not defined in the statutes and their meaning "remains unanswered to the present day".[24] There is urgent "need for a comprehensive and workable definition of 'any publication' of the Government".[25] The "confusion that has arisen as to the meaning of 'Government publication'"[26] has led the Copyright Office to express dissatisfaction with the law's present unsettled state:

"The term 'Government publication' in the Printing Law, and the corresponding term 'publication of the United States Government' in the Copyright Law, as used in connection with the prohibition of copyright, have proved to be ambiguous. Within the context of the Printing Law, 'Government publication' has been construed as including all material published by the Government. From the standpoint of the copyright prohibition

---

[21] ROBERTSON AND KIRKHAM, JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES (Wolfson and Kurkland ed. 1951) § 350.

[22] See Rice v. Sioux City Cemetery, 349 U.S. 70 (1955).

[23] Letter to United States Senate from Chief Justice Hughes, March 21, 1937, Sen. Rep. No. 711, 75th Cong., 1st Sess., p. 38 et. seq.

[24] Stiefel, *Piracy in High Places—Government Publications and the Copyright Law*, 24 GEO. WASH. L. REV. 423, 440 (1956).

[25] Gunnell, *op. cit. supra* note 5, at 183.

[26] Berger, COPYRIGHT IN GOVERNMENT PUBLICATIONS, Copyright Office, Study No. 21 C, p. 6 (mimeo. Oct. 1959).

this definition seems unsatisfactory since it would include privately-owned material when used in a document published by the Government; and it would exclude material produced or owned by the Government if it were published through private channels only".[27]

That clarification of the precise legal question at issue in this case is necessary has been emphasized by the Copyright Office.[28] The court below itself called attention to the need for a definition of the statutory term: "No clarification of the meaning of 'publication of the United States Government' appears in the Rules and Regulations of the Copyright Office".[29]

From the standpoint of the public, the press, and the Government [30] definitive interpretation by this Court is both desirable and necessary. The circumstances indeed cry out for such statutory construction by this Court.

Petitioner respectfully calls this Court's attention to "the actual, practical effect of the disputed decision—its consequences for other litigants and in other situations." [31] Petitioner will attempt to show two serious results that will accrue from the decision of the court below:

That its test is impossible to apply and therefore only adds to the existing confusion, and

that the decision below fastens upon the vast system of evasion of the present law.

b. The decision below is impossible to effectuate.

The definition of a "Government publication" adopted by the court below is that it is a publication "*commissioned* or printed at the cost and *direction* of the United States. These would be *authorized* expositions . . . " (emphasis added).

---

[27] *Id.* at 22.

[28] *Id.* at 23.

[29] See text associated with footnote 16 of opinion of Court below.

[30] See Mr. Justice Frankfurter's comment in Maryland v. Baltimore Radio Show, Inc., 338 U.S. 912, 918 (1950) ("Wise adjudication has its own time for ripening.)

[31] Cited from Chief Justice Vinson, *op. cit. supra note* 3.

Elsewhere the court says that they must be "*called for* by his official duties" (emphasis added).

The authoritative way to determine what is "called for" is to look to the official job description established by the employing Government agency for the employee involved. But, as a general rule, this information is virtually impossible for anyone not in the Government itself to obtain and for very few within the Government. Under express authorization of Presidential Executive Order, [32] the U. S. Civil Service Commission has issued to all government agencies instructions that "no one will have access to them [employees' Official Personnel Folders] except as authorized for official use." [33] In the Navy Department, for example,

"Information from an employee's personnel records may not be disclosed to persons other than authorized Federal employees without the employee's consent except as provided in NCPI 290, 5-8 and as follows: . . . (4) . . . and others having a legitimate reason for requesting such information, and who present proper credentials, may be given information regarding the employee. Such information should usually be limited to status, tenure and verification of the employee's salary." [34]

Thus, the test enunciated by the court below requires access to confidential employee personnel records properly forbidden under present official regulation. Therefore, the court's rule of law is for all practical purposes ineffectual. Instead of resolving the issue, it only compounds confusion.

c. Decision below fails to stem evasions of Copyright Law.

A system of substantial evasion of the Printing and Copy-

[32] Executive Order No. 10561, Sept. 13, 1954, 3 C.F.R. 71.

[33] U.S. Civil Service Commission, Federal Personnel Manual, R-1-40.

[34] Navy Civilian Personnel Instruction #290 (July 1960). Section 5-8, referred to in the above quoted language, deals with lists of names, salaries, titles and status; even in this connection § 5-8(b) provides: " . . . Lists for private purposes should be furnished only . . . if employees would not be disadvantaged by being listed."

right Laws prevails today in respect of copyrighting governmental publications. The Copyright Office reports:

"As shown by registrations in the Copyright Office, copyright has been claimed in a substantial number of works (chiefly historical, instructional, or technical materials) which were prepared by employees of a Government agency or a quasi-governmental organization and were used or published by the agency or organization." [35]

Sometimes, it is pointed out, the Government agency itself sponsors the private copyrighting by the government employee[36] for a variety of reasons largely related to efforts to evade the the use of the Government Printing Office's facilities.[37] The evasion of statutory copyright restrictions has gone so far within the Government as to include a formal Budget Circular issued by the Director of the Bureau of the Budget in 1943 recommending private publication instead of compliance with the law in order "to avoid the expense of printing and distributing a Government publication".[38]

Thus, a vast system of conscious as well as unconscious evasion of the restrictions on copyrighting of "Government publications" is practiced both by Government agencies as well as by their officers and employees. Sometimes the works involved are openly described as official government reports or documents; other times this fact is concealed or not revealed. This illegal practice of by-passing the restrictions on copyrighting of government publications developed out of the absence of any definition by this Court of the meaning of "Government publication" in the applicable laws. Whatever the etiology of this situation, the decision and opinion of the court below not only fail to help curb it but even give it sustenance.

The following are examples of current practice:

1. An official history of the United States Army in World

[35] Berger, *op. cit. supra* note 26, at 12-13.
[36] *Id.* at 13.
[37] *Id.* at 14.
[38] *Id.* at 14.

War II, written by the Assistant Chief of the Office of Military History while occupying that post, and published by the U. S. Government Printing Office for the Department of the Army, was copyrighted in the name of the government employee-author. See Appendix E for photo-copies of the title page and the copyright notice of this Government publication.

This is but a single example of a widespread current practice whereby publications of the Office of Chief of Military History, Department of the Army, are printed as avowedly government publications, but under copyright of individuals. See Appendix F for list of names of books, authors and copyright holders in which this evasive practice has been pursued.

2. A similar practice of evading copyright restrictions prevails in the Navy Department. For example, the book How To SURVIVE ON LAND AND SEA was authored by the "Office of Chief of Naval Operations, U. S. Navy", but it was copyrighted in 1943 and in 1951 by the U. S. Naval Institute, a private non-profit organization. A partial list of the Institute's publications is incorporated in Appendix G.

3. The Army Air Forces in World War II, through its Historical Division, assembled a seven-volume history of the record of the AAF in World War II. All seven volumes were privately published under copyright restrictions. See Appendix H for a reproduction of announcement about these volumes.

4. The Atomic Energy Commission and related agencies have likewise been party to private publication and copyrighting of official materials despite the provisions of the copyright law. The original Smyth report, for example, which was subtitled "The Official Report on the Development of the Atomic Bomb under the Auspices of the United States Government, 1940-1945" was privately published and copyrighted. See Appendix I. When the Atomic Energy Commission produced the first complete reactor engineering reference book, it was offered to the public by a commercial publisher under private copyright. See Exhibit J for an extract from the announcement of this book.

The practice of by-passing or evading the statutory restrictions on copyrighting of official publications is followed by other Government agencies as well.

5. To the Petitioner's best knowledge and information, for instance, there are no less than 48 books by scientists who performed work for Government atomic energy projects which have been privately copyrighted. The following title is an example: CRYOGENIC ENGINEERING (1959), prepared by the National Bureau of Standards, U. S. Department of Commerce, for the Atomic Energy Commission.

6. The Radiation Laboratory Series, 25 books arranged for by the U. S. Office of Scientific Research and royalties for which are paid into the U. S. Treasury, are privately copyrighted and published.

7. The Rand Corporation is a Government-sponsored non-profit corporation which prepares reports for various official agencies, including the Air Force, under contract. Where it submits a report which it has been paid specifically to prepare, the Rand Corporation copyrights the report thus furnished to the contracting government agency.[39]

8. Private copyright of clearly official documents has spread to the Congress. Appendix K is a photocopy of the title page of SPACE HANDBOOK: ASTRONAUTICS AND ITS APPLICATIONS, which was copyrighted although it is a Staff Report of a Congressional Committee, published by the Government Printing Office as a document of the Congressional Select Committee on Astronautics and Space Exploration.[40]

---

[39] For the Copyright Office's doubts as to the legality of this practice, see Berger, *op. cit. supra* note 26, at 23.

[40] The Congressional *vademecums* on parliamentary procedure were privately copyrighted, but only after specific legislative permission from the Congress. CANNON, PROCEDURE IN THE HOUSE OF REPRESENTATIVES, H. Doc. No. 122, 86th Cong., 1st Sess., was privately copyrighted by Congressman Cannon (although published by the U.S. Government Printing Office), pursuant to authority granted in 62 Stat. 1052 (1948); 73 Stat. 20 (1959). Likewise with the approval on May 2, 1958 of the private copyright of WATKINS AND RIDDICK, SENATE PROCEDURE, PRECEDENTS AND PRACTICES, Sen. Doc. No. 93, 85th Cong., 2nd Sess.

Your Petitioner's facilities for uncovering such examples are, of course, very limited. But the known facts clearly disclose a creeping paralysis of statutory restrictions upon copyrighting of Government publications. The decision of the court below will, if permitted to stand, cause serious mischief through encouragement to copyright by stratagem and to growing evasion of the provisions of the Printing and Copyrignt Laws dealing with the noncopyrightability of Government publications. It will place a premium on subterfuge, artifices and machination to dodge copyright restrictions on official works.

The public interest requires an end to the continuing erosion of statutory requirement and the danger of even worse evasion of law. This Petition presents the opportunity for authoritative construction of the applicable statutes by this Court.

IV. Unsettled Constitutional questions.

This Court's most delicate and important function is called into exercise with the resolution of unsettled questions of Constitutional law. Such a question, not even touched by the court below,[41] appears in the instant case.

Does the First Amendment's guaranty of Freedom of Press permit a Government official to arrogate to himself a private copyright monopoly over the use of "Government publications"? Does it abridge the First Amendment for a Government agency which employs such official to acquiesce in or be party to such private copyright of "Government publications" by its employees or others?

a. Freedom of Press guarantees the people's right to know what their Government officers do and say in their official capacity?

1. The First Amendment established the Constitutional right of freedom of the press. The nation's founders saw two vital needs for such protection: (1) that a free society cannot survive without full knowledge of its Government's activities, and (2)

[41] See Recent Cases, 73 HARV. L. REV. 1219, 1220 (1960).

that a free press was the people's only instrumentality for obtaining such information.

2. James Madison was chairman of the committee that drafted the First Amendment (Patterson, *Free Speech and a Free Press* (1939), 121) and presumably knew its purpose. He wrote: "the right of freely examining public characters and measures, and of free communication thereon, is the only effectual guardian of every other right . . . " 6 *Writings of James Madison* (1906 ed.), 398.

3. The essentiality of a free press for a free people has long been a key element in this Court's rulings. In *Associated Press v. United States*, 326 US 1, 20 (1945), Mr. Justice Black wrote for the Court:

"The First Amendment . . . rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society."

4. Freedom of the press was not designed as a special privilege for the publishing business, but rather as an extension of the personal rights of each American. It is a guaranty of the individual's right, and was thus joined in the First Amendment with the individual's rights of free speech, assembly and petition.

The press itself is fully aware of this obligation to the public, as witness the statement of Elisha Hanson, counsel for the American Newspaper Publishers Association:

"The right to have a free press is the right of the people, not a privilege of a particular segment of our economy engaged in the business of gathering and disseminating information in printed form. Publishers are but trustees of this right. Thus the press not only has the obligation to gather and disseminate information of general public interest, but it has the greater obligation—that of preserving the right of the people to have a press free from restraint in the performance of its function and from whatever source restraint may spring." [42]

---

[42] *The Two Bulwarks of Liberty: A Free Press and an Independent Judiciary*, 41 ABA JOURNAL 217, 218 (1955).

Thus, while the American people do not appear as a party to this law suit, it is *their* rights which are at stake.

5. The Constitutional Freedom of the Press is indivisible. The press is not free, this Court has said, if any classification of publisher is denied free press: "The liberty of the press is not confined to newspapers and periodicals . . . The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion." *Lovell v. Griffin*, 303 U.S. 444, 452 (1938), per Hughes, Ch. J.

Elsewhere this Court has said: "Freedom to publish means freedom for all and not for some." *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

b. Right of access to Government publications is a sine qua non of a free press and is protected by the First Amendment.

1. The *New York Times* once editorially said that freedom to produce a blank page is hardly freedom of the press. May 31, 1957, § 1, p. 26, col. 3. The right to publish and the right to distribute have already been clearly affirmed as part of Freedom of the Press. *Lovell v. Griffin*, supra, at 452; *Winters v. New York*, 333 U.S. 507, 509 (1948).

The First Amendment would be sterile today if its sanctions were limited to the mere act of printing. The Zenger case decided that over 200 years ago. This Court has not so limited Freedom of Press. *Lovell v. Griffin*, supra, at 452. Freedom of Press means more than freedom to print; it includes *freedom of access* to materials officially and publicly released by the United States Government. Anything less would hamstring the public's right to know and undermine the fundamental objective of the First Amendment.

2. The United States Government has itself urged upon this Court the very point here being urged by your Petitioner. In its Brief before this Court in *Barr v. Matteo, supra*, the Solicitor General said:

"The interest of the people in having access to the facts is at stake, for press releases and press conferences by subordinate

officials exercising policy-making functions have become an important and accepted means of communication. The decision below, if allowed to stand, will necessarily tend to curtail the dissemination of controversial information which the public is entitled to receive.

"In recent years, Congress has given repeated emphasis to the public's 'right to know'. Legislative bills have included 'a positive affirmation of Congress' intent that the people be enabled to know what is going on in their Government . . .' H. Rep. No. 1770, 85th Cong., 2d Sess. 23. The importance of a free flow of information to the public was recently expressed by a congressional committee in these terms (H. Rep. No. 1758, 85th Cong., 2d. Sess. 17):

" 'That the people must know' is a premise which is cemented into the foundations of any working democracy. James Monroe put the principle very well in his seventh annual message on the state of the Union: 'To the people, every department of the Government and every individual in each are responsible, and the more full their information the better they can judge the wisdom of the policy pursued and the conduct of each in regard to it.'

"These statements do not unduly emphasize the importance of a public official's informing function . . . " (at pp. 19-20).

3. A distinguished Federal judge has written on this subject in terms which are precisely applicable here:

"Governmental activities do not allow differentiation between what is private and what is public. All the business which persons in public office, high or low, perform is of a *public nature*. So there is no conflict, as in the case of privacy, between the individual rights and the public's demands—but rather between the right of the public to be informed and the arrogative right of persons in public office to withhold information."

"The adoption in the Federal and State constitutions of the guarantee of freedom of speech and press and of the other democratic rights led to the recognition of the right of access

and publication of the activities of public men and public bodies."

"If those in public office arrogate to themselves the unrestricted power to determine what information shall be made known to the public, it would become too easy for them to conceal their conduct and misconduct,—their deeds and misdeeds."[43]

4. This Court has said that First Amendment rights must be "guarded with a jealous eye," *A.F.L. v. Swing*, 312 U.S. 321, 325 (1941), per Frankfurter, J. A liberal interpretation of such rights is "the only conclusion supported by history": "For the First Amendment does not speak equivocally . . . It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow." *Bridges v. California*, 314 U.S. 252, 263, 265 (1941), per Black J.[44]

First Amendment rights have been persistently protected by this Court from erosion by indirection as well as by direct act.[45] "Sophisticated as well as simple minded" evasions of Constitutional rights have been condemned.[46]

5. The history of the struggle for Freedom of the Press bars any notion that the Bill of Rights provides freedom to print and disseminate information but denies freedom to acquire it. *Freedom of Press must embody free access to facts concerning the Government's operations and to all officially released Government materials.*

---

[43] Yankwich, *Legal Implications of, and Barriers to, The Right to Know*, 40 MARQUETTE L. REV. 3, 6, 33, 35 (Summer 1956).

[44] See also Baxley v. United States, 134 F. 2d 937, 938 (4th Cir. 1943).

[45] Guinn v. United States, 238 U.S. 347, 361 (1915); Grosjean v. Amer. Press Co., 297 U.S. 233, 250 (1936); Speiser v. Randall, 357 U.S. 513, 518 (1958). See also Milwaukee Publication Co. v. Burleson, 255 U.S. 407, 430-31 (1931) (Brandeis, J., dissenting); United States v. Rumely, 345 U.S. 41, 58 (1953) (Douglas, J., concurring).

[46] See Mr. Justice Frankfurter's comment, Lane v. Wilson, 307 U.S. 268, 275 (1939).

c. Decision of Court Below Abridges Freedom of the Press.

1. If Admiral Rickover has copyright monopoly over his speeches relating to his official responsibilities, he can deny to anyone, including the daily press and news periodicals, the right to quote these speeches. That he granted such limited right is a matter of grace on his part, not a question of right on the part of the press. As the *Dallas* (Texas) *Morning News* stated editorially: "Application of this rule in the past would have deprived the nation of George Washington's Farewell Address and Abraham Lincoln's imperishable remarks at Gettysburg." (Dec. 7, 1959).

By sanctioning Respondent's right to conceal or selectively to release officially published materials, the court below hobbles the public's right to know. *The Constitutional guarantee of a free press is lost if its effectiveness depends on the sufferance of those from whom the Constitution guaranteed the press freedom.*

2. In the present case Respondent exercised his copyright power to shut off all press rights or turn them on at will. When first he copyrighted the speeches, he allowed only "contemporary press use". Later he decided to change this permission to read "for newspaper or news periodical use". Brief for Appellant and [Joint] Appendix Below, p. 36.

Today Respondent favors the daily press; tomorrow he may turn on it. *A free press cannot exist on the basis of juggled and discriminatory permissions granted or withheld solely by the grace of a Government official.*

3. The opinion of the court below, if allowed to stand, permits a Government official to

dictate or manipulate the press's use of an officially-issued press release,

make it available only to those who speak favorable of him and interpret it in an "approved" manner, and

limit its use to political, social, religious or other favorites.

In other words, the opinion means that a Government official can deny, limit or restrict the press' access to officially released and sanctioned press releases except on his own terms.

4. This Court has warned against the dangers in limiting Government information to what a Government official pleases to make known. In a case arising out of the Teapot Dome scandals of the 1920's the Court said: "Experience has taught us that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; . . . " *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927).

5. Inconspicuous suppression of public documents can effectively be achieved through copyright. The law permits copyrighting of materials that are not printed. Moreover, a great amount of copyrighted material is not accessible to the public and is not even available for examination at the Library of Congress because the Library cannot possibly store all copyrighted material and must return or discard countless thousands of such works. In addition a substantial portion of copyrighted material never appears in the official catalog cards filed in the reading rooms of the Library of Congress and furnished to the nation's libraries. For example, not one of Respondent's 20 speeches listed in Appendix D, copyrighted by him as of the beginning of October, 1960, was listed in the official reading room card files of the Library of Congress or in cards furnished to the nation's libraries. *For practical purposes, therefore, the result is actual suppression of the speeches of high-ranking Federal officials since the public at large has no means of becoming aware of them or of obtaining access to them.*

6. Thus, by action of Respondent Government official, and because of the failure of the United States Government to prevent such behavior on the part of its employees, your Petitioner has been deprived of rights guaranteed to it by the First Amendment.

7. The peculiar genius of the Bill of Rights is its adaptability to the problems of each successive generation of Americans.

This generation's special problem is the public's right of access to official government information. The very nature of First Amendment rights calls for their expansion to meet new and undecided issues. Such is this case.

SPECIAL REQUEST

Your Petitioner has attempted to show the varied interests of the United States Government in the underlying issue of this case, as follows:

1. As an employer, interested in the scope of official employment;

2. As the administrator of the Copyright Office, with obligations of interpreting the laws affecting copyright;

3. As the operator of the Government Printing Office, with the need to know the meaning of the statutory term "Government publication";

4. As the Government of the United States, whose own actions, and whose employees' actions, have been alleged to be unconstitutional; and

5. As the representative of the American people, responsible for aiding in the equitable, just, and effective enforcement of law.

Consequently, it is respectfully suggested to the Court that it consider whether the Solicitor General should be invited to submit a brief *amicus curiae* in this proceeding, either in connection with this Petition or, in the event the Petition be granted, on the merits.

CONCLUSION

For the foregoing reasons, the Petition for a writ of certiorari should be granted.

Respectfully submitted.
STANLEY B. FROSH
HARRY N. ROSENFIELD

January 1961.

APPENDICES

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,463

PUBLIC AFFAIRS ASSOCIATES, INC., Trading as Public Affairs Press, APPELLANT

v.

VICE ADMIRAL HYMAN G. RICKOVER, APPELLEE

On Appeal from the United States District Court for the District of Columbia

---

Decided October 20, 1960

Mr. Stanley B. Frosh for appellant.

Mr. Joseph A. McDonald, with whom *Mr. Edwin S. Nail* was on the brief, for appellee.

Before Mr. Justice Reed, retired,* and Washington and Danaher, Circuit Judges.

Mr. Justice Reed, sitting by designation: This is an appeal from the judgment of the United States District Court for the District of Columbia dismissing after trial on the merits a complaint for a declaratory judgment.[1] Appellant, an educational publishing organization, complained on January 16, 1959, that appellee, an admiral of the United States Navy, refused appellant the right to "use, quote or publish" speeches appellee had made "in his capacity as an admiral." Appellant

---

* Sitting by designation pursuant to Sec. 294(a), Title 28, U.S. Code.

[1] Public Affairs Associates, Inc. v. Rickover, 177 F. Supp. 601.

claimed the right to publish because appellee used the "facilities, information and data obtained . . . in connection with his duties as a public official." Appellant further alleged that the speeches have been released to the public press and therefore "are in the public domain and not subject to any curtailment as to use."

Judgment was sought "declaring defendant may not restrict the quotation from these public speeches, either in full or in part, in book form or otherwise, once they have been delivered publicly"; that "copyright" restrictions on his public speeches be declared removed.[2]

After an answer denying portions of the complaint, an agreed statement of facts was filed. That statement showed that the appellee during the pertinent period was a vice admiral on active duty in the Navy Department as Assistant Chief of the Bureau of Ships for Nuclear Propulsion and Assistant Director for Naval Reactors, Division of Reactor Development, United States Atomic Energy Commission. From October 20, 1955, to the commencement of this action, Admiral Rickover delivered twenty-three speeches in public.[3] Some months prior to the

---

[2] Jurisdiction and the existence of actual controversy is not contested. 28 U.S.C. § 1338; White v. Kimmel, 193 F. 2d 744 (9th Cir., 1952).

[3] (1) Metallurgy in Atomic Power, October 20, 1955, National Metals Congress of the American Society for Metals; (2) Nuclear Power and the Navy, October 27, 1955, San Francisco Council of the Navy League, the Chamber of Commerce and the Commercial Club; (3) Engineering and Scientific Education, November 22, 1955, the Thomas Alva Edison Foundation, Inc.; (4) Lead Time and Military Strength, January 12, 1956, The Society of Business Magazine Editors; (5) Nuclear Power and the Navy, August 16, 1956, Bellefonte Sesquicentennial; (6) The Education of Our Talented Children, November 20, 1956, The Institute Sponsored by the Thomas Alva Edison Foundation, Inc.; (7) Nuclear Power—Challenge to Industry, January, 1957; (8) The Challenge of Nuclear Power, March 1, 1957, Westinghouse Science Talent Search Award Ceremony; (10) Energy Resources and Our Future, May 14, 1957, Annual Scientific Assembly of the Minnesota State Medical Association; (11) The Naval Revolution, September 14, 1957, American Legion Naval Affairs Committee; (12) International Communication Award

institution of this suit, July 9, 1958, he had contracted with E. P. Dutton & Co., Inc., to publish a book to be known as Addresses of Admiral Rickover, based in part on certain of said speeches. The contract asserted that ownership of the speeches was in Admiral Rickover. On December 1, 1958, the Admiral filed, subsequent to their delivery, an application for registration of a claim to copyright in a compilation of the first 22 of the speeches in question with a copyright notice. The appellee recognizes that the "compilation did not revive any exclusive rights held in such material prior to" previous publication. The same day appellee filed application for registration of speech No. 23. This last speech was delivered December 11, 1958. On January 12, 1959, a book published by E. P. Dutton & Co., Education and Freedom, based largely on a number of the speeches in controversy, was offered for copyright in the name of Admiral Rickover and registered.

The agreed statement of facts shows that the writing of these speeches was done at home after normal working hours or while traveling. It was agreed:

"The speeches were written by the Admiral in longhand.

"Christopher Columbus," October 12, 1957; (13) The Balance Sheet on Education, November 22, 1957, The Institute Sponsored by the Thomas Alva Edison Foundation, Inc. at the Engineering Society of Detroit; (14) Revolution at Sea, December 5, 1957, Overseas Press Club; (15) Education in the Nuclear Age, December 6, 1957, Dedication of Nuclear Power Training School; (16) European and American Secondary Schools—A Comparison, March 23, 1958, Fiftieth Anniversary, St. Alban's School; (17) The Truth Shall Make You Free, April 19, 1958, The Inauguration Ceremonies of Polytechnic Institute of Brooklyn; (18) The Meaning of Your Profession, June 14, 1958, Stevens Institute of Technology; (19) Investment in Human Resources, September 25, 1958, Engineers Club of St. Louis; (20) The Meaning of the Nautilus' Polar Voyage, September 29, 1958, Altoona Lions Club; (21) A Common Heritage, October 23, 1958, Columbia University Forum; (22) Theodore Roosevelt—Modern American, October 27, 1958, Presentation, Theodore Roosevelt Distinguished Service Medal; (23) Education—Our First Line of Defense, December 11, 1958, The Harvard Club of New York City.

A large part of the speeches were typed by Mrs. Rickover at home. The typewritten material plus some handwritten portions were brought in to the Admiral's office for the typing of a final copy and the preparation of a multilith master by the Admiral's secretary. In some cases the master was prepared directly from the typewritten copy as brought in from home. All of the speeches were multilithed on Government duplicating machines."

* * * *

The defendant admits that it was his practice to have his speeches as prepared for distribution bear his name, his rank in the United States Navy and his title in the Atomic Energy Commission, that the speeches as distributed customarily bore a statement 'for release' giving the date and frequency the time of the release and with few exceptions were on the paper stock used for press releases by the Department of Defense or the Atomic Energy Commission."

After multilithing and at or before delivery, all speeches except Nos. 7 and 12 in footnote 3, supra, were distributed. The statement of agreed facts shows as follows:

"Certain of the speeches, approximately sixteen in number, were also made available to the press through the Public Information Office of the Department of Defense or of the Atomic Energy Commission, or both. In distributing the speeches, Admiral Rickover mailed some to individuals who had requested copies or who[m] Admiral Rickover believed would be interested in the subject. Some were sent by Admiral Rickover, approximately 50 in each case, to the sponsor of the speech to be made available to the press and others at the place where the speech was to be delivered. Some speeches were sent to the Press Club in Washington by Admiral Rickover for the use of representatives of the press."

Each speech was cleared by the Department of Defense, Office of Security Review. This was done under § 1252 of the General Regulations of the Navy which, inter alia, provide:

"3. Persons in the naval service desiring to publish articles on professional, political, or international subjects in accord-

ance with the provisions of this regulation shall cause their signatures to appear on such articles, together with a statement to the effect that the opinions or assertions contained therein are the private ones of the writer and are not to be construed as official or reflecting the views of the Navy Department or the naval service at large. Immediately upon the acceptance of such articles for publication, the writer shall forward a complete copy of such articles to the Secretary of the Navy for the files of the Navy Department."

There was also a Department of Defense Directive in effect during the time the speeches were delivered.[4]

Admiral Rickover had duties of supervision and inspection that could be carried out at or near the various points of delivery, and arrangements were made to make the speeches in free or "off duty" hours. No transportation costs were paid by Admiral Rickover in connection with his addresses. Honoraria, when offered, were paid directly to charities specified by the Admiral.

The District Court in its opinion determined that the addresses listed in note 3 fell into a class of literary productions "that arise out of [the author's] official actions, although writing the book or delivering the address in question, is no part of his official duties."[5] Therefore, the trial court determined these

[4] "V. *Writing for Publication by Defense Personnel, as Individuals.* Personnel of the Department of Defense, military and civilian, who write for outside publication not in connection with their official duties on any subject or in any form shall ascertain that such activity will not interfere or conflict in any way with their regularly assigned duties. Such activity will not be conducted during normal working hours, or accomplished with the use of Department of Defense facilities, or personnel. Such writers will be on an exact parity with outside professional writers with respect to accessibility and use of technical or other information for manuscripts or articles written for publication. Articles by such personnel, dealing with military matters, will be submitted to the Office of Security Review, OASD (PA), for review and clearance to avoid any possible violation of military security." DOD Directive No. 52,309, Aug. 17, 1957.

[5] 177 F. Supp. 601, 604.

addresses were not governmental publications. It was also held that the issue of the press releases and the delivery of the speeches were not "an abandonment of the literary property or a dedication to the public." [6]

I.

Underlying an analysis of the respective contentions of the parties here is the legal right of an author of books, lectures or addresses in his unpublished writings. Copyright, the exclusive right of an author to publish for a limited time his work, did not exist at common law even though at common law an author had a property right in his unpublished work.[7] This property right enabled an author to control the disposition of his work until such time as he released it to the public. If this right of control had not ended with publication, there would have been no need of copyright protection. The property right would have been perpetual. The problem of balance between the rights of authors to the fruits of their efforts and the right of the public to have opportunity for learning or diversion was solved by adoption of the copyright acts.[8] Although after publication the rights of authors in the United States are now measured by the Copyright Act, their common law right to the first publication has been preserved.[9] We have not depended primarily upon the flexibility of the common law

[6] Id., at 606.

[7] Mazer v. Stein, 347 U.S. 201, 214-215; Wheaton v. Peters, 8 Pet. 591, 657, 662; White Smith Music Co. v. Apollo Co., 209 U.S. 1, 15, 18-20 (concurring opinion). The weight of the English cases supports this view. See Millar v. Taylor, 4 Burr. 2303, 98 Eng. Rep. 201 (1769 K.B.); Donaldson v. Beckett, II Brown 129, 1 Eng. Rep. 837 (1774 H.L.); Jefferys v. Boosey, 4 H. L. Cas. 815, 961 (1854); Copinger and Skone James, Copyright (9th ed., 1958) 2, 16.

[8] See Holmes v. Hurst, 174 U.S. 82, 85.

[9] 17 U.S.C. § 2: "*Rights of author or proprietor of unpublished work.* Nothing in this title shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor."

in the development of copyright. This right to choose the time and manner of releasing to the public the labor product of the mind protects against literary piracy.[10]

Speeches and lectures for oral presentation may be copyrighted under the Copyright Code.[11] Their texts, of course, may be copyrighted as writings under § 4.[12] Were the Admiral a private citizen, therefore, no substantial question would exist as to the susceptibility of these works to statutory copyright. The cases make it clear that an author's common law copyright may exist in lectures and other works that are performed as well as in writings.[13] Our consideration turns first to whether the lectures' general susceptibility to copyright is affected by the Admiral's status as a high government official and the nature of the material discussed. Narrowly stated in terms of the statutory provisions, were these speeches or their written texts publications of the United States Government in which, under § 8 of the Code, no copyright shall subsist.

In these present case Public Affairs Press asserts first, that as these speeches "resulted from his official responsibilities" they should be classified as a "publication of the United States Government" under 17 U.S.C. § 8, which provides, "No copyright shall subsist in any publication of the United States Government."[14] This generalization creates a sea of troublesome questions. Such publications range from the Presidents' messages on the State of the Union, the Congressional Record, departmental pamphlets, maps, regulations, and judicial de-

---

[10] Exploitation of the work of others has been not infrequent in England and the United States. See Dickens v. Hawksley, [1935] 1 Ch. 267, 287; Macmillan & Co. v. Dent, [1907] 1 Ch. 107; Holmes v. Hurst, 174 U.S. 82; Mifflin v. R. H. White Co., 190 U.S. 260; Mifflin v. Dutton, 190 U.S. 265.

[11] 17 U.S.C. § 12.

[12] 17 U.S.C. § 4: "The works for which copyright may be secured under this title shall include all the writings of an author."

[13] Ferris v. Frohman, 223 U.S. 424, 430; Nutt v. National Institute, Inc., 31 F. 2d 236 (2d Cir. 1929).

[14] This provision appeared as § 7 of the 1909 Copyright Act, 35 Stat. 1077.

cisions to forms for the moving of admission to the bars of the various courts. Apparently the language of the provision originated in the Act for Public Printing, 28 Stat. 601, § 52.[15] It is designed to achieve in a democracy that depends upon accurate public knowledge the broadest publicity for matters of government. No clarification of the meaning of "publication of the United States Government" appears in the Rules and Regulations of the Copyright Office.[16] The provision grew out of a "confused entanglement" over the sale of the stereotype or electrotype plates desired by Representative James D. Richardson for use in a publication "prepared, compiled and edited by him on behalf of the Joint Committee on Printing."[17]

The language of the original statute on printing—"No . . . Government publication shall be copyrighted"—seems to refer to a publication actually produced by the Public Printer.[18] The Printing Office provision seems to mean, if read naturally, "produced in that office."[19] The Copyright provision should be read, we think, to refer to publications commissioned or printed at the cost and direction of the United States. These would be authorized expositions on matters of governmental interest by governmental authority.[20] The second section of

---

[15] See the discussion in Berger, Copyright in Government Publications, in Copyright in Certain Works, General Revision of the Copyright Law, Copyright Office, Study No. 21 (A-C), p. 4 (1959).

[16] 37 C.F.R. § 201.1-201.8 (1960).

[17] I Messages and Papers of the Presidents I. II. III (1913 ed., Bureau of National Literature) copyright 1897 by James D. Richardson. See Stiefel, Piracy in High Places, in ASCAP Copyright Symposium No. 8, p. 3, 25 (1957).

[18] See S. Rep. No. 1473, 56th Cong., 1st Sess.

[19] S. Rep. No. 1473, supra, p. 2:

"The Committee on Printing will not undertake to discuss the legal question here involved further than to say that the prohibition contained in the printing act was intended to cover every publication authorized by Congress in all possible forms. . . ."

[20] It would not seem to us that occasional use of a governmental secretary for transcribing or of multilithing machines for copies for publicizing the speeches would fall under the statutory concept of a publication by or at the cost of the United States.

§ 8 protects authors' copyrights against governmental use of copyrighted material.[21]

Both ordinary practice [22] and the decided cases support our conclusion.[23] Before any enactment as to governmental publication, the Supreme Court declared that federal judicial opinions as such, "published under the authority of Congress," were not copyrightable.[24] The Court returned the *Wheaton* case to the trial court, however, for determination of whether Mr. Wheaton had complied with copyright as to his own notes on the cases.[25] That action recognizes the right, outside of statutory allowance or negation, of a governmental employee to copyright comments on non-copyrightable governmental publications. In *Sherrill v. Grieves*, 57 Washington Law Rep. 286, 290 (Sup. Ct. D.C. 1929), an author's copyright on a pamphlet previously published by a governmental school for officers for use in local instruction with the author's consent was upheld against the contention that it was a governmental publication. The author was a government employee but the writing of the pamphlet was outside his employment. In *Sawyer v. Crowell Pub. Co.*, 46 F. Supp. 471 (D.C.S.D.N.Y. 1942), the court dealt with a map produced by government employees in the course of their duties, copyrighted by one employee and then published by the

---

[21] "The publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such copyright material without the consent of the copyright proprietor."

[22] See the list of fifteen senior military officers who, while on active duty, were said to have published books relating to military experiences. 105 Cong. Rec. 15927-15928 (daily ed., Aug. 31, 1959). See 7 Decisions of Comp. Gen. 221, 223.

[23] See a thorough note on this case below, 60 Col. L. Rev. 398 (1960); 73 Harv. L. Rev. 1219 (1960). See a discussion of cases 24 Geo. Wash. L. Rev. 423, 443-447 (1955-56).

[24] Callaghan v. Myers, 128 U.S. 617, 649; Wheaton v. Peters, 8 Pet. 591, 668.

[25] Callaghan v. Myers, supra, at 650. See Mr. Justice Story on circuit in Gray v. Russell, 1 Story 11, 20-21, 10 Fed. Cas. No. 5728, p. 1035, 1039 (C.C.D. Mass., 1839).

Government with notice of that copyright registration. The court held that as the map "relates directly to the subject matter of the plaintiff's work" and was printed and engraved by the Government, the attempted copyright inured to the employer's benefit. Compare *United States v. First Trust Co. of St. Paul*, 251 F. 2d 686 (8th Cir. 1958), an action to quiet title, where it was held that a book of notes of exploration kept by Col. Clark was a private journal. He was an army officer, a member of the Lewis and Clark expedition, but Lewis was the commander. Lewis was instructed to keep notes by President Jefferson. This he did. Lewis also sent Clark's notes for the perusal of the President but with comments and directions that caused the court to hold they were to be treated as private notes rather than official, as Lewis' were. As the Clark notes were not shown to be kept in accordance with Clark's duties, the court held them not to be the property of the Government.

It cannot be properly said, as appellant asserted, that a governmental official who speaks or writes of matters with which he is concerned as an official is by the very fact of being such an official barred from copyright on his productions. If they are statements called for by his official duties or explanations as guides for official action, they are barred from a copyright. A perusal, even of the titles and the places of delivery alone, should be sufficient to show that these addresses were not governmental publications in that sense. The speeches themselves bear out this statement. We hold that none of these papers is a Governmental publication.

II.

The next question is whether Admiral Rickover has forfeited his right to a copyright on the twenty-two addresses delivered before December 1, 1958.[26] The Copyright Act, § 8, so far

[26] The word "forfeit" is adopted to avoid "dedication" or "abandonment" which seem to suggest purposeful release to the public. The purpose of a statutory "publication" is immaterial. National Comics Publications v. Fawcett Publications, 191 F. 2d 594, 598 (2d Cir. 1951); Nimmer, Copyright Publication, 56 Col. L. Rev. 185, note 4 (1956).

as here important, provides, "No copyright shall subsist in the original text of any work which is in the public domain." The manuscript is the private property of an author until publication with all the attributes of ownership within the concept of personal property.[27] This right of authorship is lost—no doubt often inadvertently—when the owner puts his work in the public domain by publication without obtaining a copyright. The right of authorship become a copyright with similar individual privileges for the owner by publication and the affixation of the copyright notice.[28]

The only United States statutory definition concerning publication is not directly applicable. It is § 26 and applies to § 24 as to duration of copyright. It does give some indication of congressional thinking on the subject. It reads as follows:

"In the interpretation and construction of this title 'the date of publication' shall in the case of a work of which copies are reproduced for sale or distribution be held to be the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority, . . . "

"Public distribution" is the phrase of importance in this case. In England there is a statutory definition in the 1956 Copyright Act, § 49(2)(c): "subject to the preceding paragraphs, a literary, dramatic or musical work, or an edition of such a work, or an artistic work, shall be taken to have been published if, but only if, reproductions of the work or edition have been issued to the public;" Copyright Act, 1956, 4 & 5 Eliz. 2, c. 74.

An authoritative English textbook states the rule as follows: "Prima facie a literary, dramatic or musical work, or an edition of such a work or an artistic work, is published if, but only if, reproductions of the work have been issued to the public . . . . " Copinger and Skone James, Copyright, (9th ed., 1958), p. 21, 30.

---

[27] Ferris v. Frohman, 223 U.S. 424, 434; 17 U.S.C. § 2, note 9, supra.

[28] 17 U.S.C. § 10.

In determining whether publication forfeiting the author's power to copyright the addresses has occurred, we must consider the intent of Congress to induce publication for general use by allowing a limited monopoly to enable authors to profit from their writings and the congressional enactment, § 8, which permits a copyright only when the writings have not been put into the public domain, that is, voluntarily released to the public by the author. The Supreme Court has said, a propos of a similar situation: "Such forfeitures are never to be inferred from doubtful language." [29] Nor should they be inferred from doubtful actions. A liberal attitude in protecting any work in its passage from the perpetual but non-productive absolute common law rights of an author to the limited but productive monopoly of the copyright is enjoined upon the courts by the purposes of the Copyright Act. However, an author's intent as to publication should not be given controlling weight against the effect of his acts.[30]

The agreed facts stated at pages 3 and 4, supra, show a wide distribution not only to the press but also to people generally who desired copies through interest in the subjects of the addresses. The handling of the addresses prior to December 1, 1958, when copyrighting was first attempted, indicates a studied effort not only to secure publicity for the contents of the addresses through the channels of information, but to go beyond customary sources of press or broadcasting in distributing the addresses to any interested individual. Publication, for measurement of the duration of a copyright, dates from a sale or when "publicly distributed" by the owner of the copyright.[31] Such a measure for the meaning of publication for release of authorship rights seems most consistent with the Act.

In *American Visuals Corp. v. Holland*, 239 F. 2d 740 (2d Cir. 1956), Judge Frank writing, it was held that a distribution

[29] Washingtonian Co. v. Pearson, 306 U.S. 30, 42.

[30] Cf. Roberts, Publication in the Law of Copyrights, ASCAP Copyright Law Symposium, No. 9, p. 121.

[31] 17 U.S.C. § 26, supra, p. 10.

of several hundred copies of an advertising scheme to prospective customers, apparently with suitable notice of copyright claim under § 10 of the Act, was sufficient publication to comply with the statutory requirement of publication for copyright.[32] Even though we follow the preceding opinion's suggestion that publication to gain a copyright requires less evidence of publication than publication to lose a common law property right, we have been unable to conclude that the distribution of almost all of his addresses was not a dedication to public use. This makes it unnecessary to consider whether the oral presentation alone would or would not be a publication under the Copyright Act.[33]

An important case from this Circuit, *Hirshon v. United Artists Corp.*, 243 F. 2d 640 (1957), discusses publication. Twenty-five hundred copies of a song were distributed in order to publicize it, p. 645: "All the record shows is that 2,500 copies of appellant's song were printed and that some [2,000] of them were distributed to broadcasting stations and professional musicians for 'plugging' purposes, chiefly through Broadcast Music Incorporated, named on the copies as a licensing agent. Not a single copy was sold. No license or other permission was given to anyone to perform or otherwise use the song. Nothing was said or done, beyond the described distribution, to give any recipient of a copy the impression that he could make any use of it without first obtaining the proprietor's license through the stated licensing agent." This was held a limited publication which did not vitiate the copyright.

The agreed statement of facts in the case under consideration shows no effort to limit distribution of the speeches delivered prior to December 1, 1958, but rather a willingness to make

[32] "Any person entitled thereto by this title may secure copyright for his work by publication thereof with the notice of copyright required by this title; . . . " 17 U.S.C. § 10.

[33] Cf. Ferris v. Frohman, 223 U.S. 424, 430; Nutt v. National Institute, Inc., 31 F. 2d 236 (2d Cir. 1929); Nimmer, Copyright Publication, 56 Col. L. Rev. 185, 194-197 (1956); Kaplan, Publication in Copyright Laws, 103 U. Pa. L. Rev. 469, 473-479 (1955); Selvin, Should Performance Dedicate?, 42 Calif. L. Rev. 40 (1954).

them available to all who might be interested. Certainly when all of Admiral Rickover's acts of distribution are considered together—performance, distribution to the press, the copies sent to individuals at the recipient's request and those sent unsolicited, the copies sent in batches of 50 for distribution by the sponsors of speeches—it is difficult to avoid the conclusion that these acts, in their totality, constitute publication of the speeches and their dedication to the public domain. There is no effort shown to protect the author's private right in any way, no limitation upon who might obtain copies. That these speeches were open to the entire world could not have been more clearly manifested unless the author had printed upon the copies, "All claims to copyright waived." See *White v. Kimmell*, 193 F. 2d 744 (9th Cir. 1952).

Since the distribution was not limited in any way to a particular group, no question exists in this case as to the extent of any limitation so as to avoid "publication" in the copyright sense. Anyone was welcome to a copy.

Nor do we have any problem as to limited use of the addresses by the press for fair comment. The press was free to use the speeches in whole or in part for their news value. But such ephemeral use is far different from the unlimited distribution to anyone who was interested which is manifested by the agreed statement of facts. It is the complete absence of limitation on the use of the printed distributions by anyone at any time which destroyed the common law rights of the author.

III.

Copies of the speeches delivered after December 1, 1958, bore this sort of notice: "Copyright 1958, H. G. Rickover. No permission needed for contemporaneous press use. Above copyright notice to be used if most of speech reprinted." Copies of these speeches were deposited in accordance with the act. The appellant does not appear to contend that this notice does not contain all the formal elements required by § 19 of the Code. Rather, it asserts that these notices do not comply with the act because, in addition to the required elements, they also

contain a conditional permission to use the work. Appellant contends that the terms of this condition are vague, particularly "contemporaneous" and "press", and for this reason the entire copyright is invalid. No authority is cited for these contentions. The argument fails to distinguish between a valid and sufficient notice followed by additional, perhaps questionable, limitations and a notice which fails to comply with the specific requirements of § 19. There is not much merit to appellant's contention that the condition is vague or improper, but in any event the existence of the admittedly valid notice preserves all rights and the contemporaneous granting of limited permission to use the work, whether valid or not, has no effect on the validity of the underlying and fully preserved right.

A question is raised as to fair use of these later addresses in compilations or in quotation or criticism. This is a suit for declaratory judgment, and appellant has not presented a copy of the book or pamphlet it intends to publish. Nor has it otherwise unambiguously indicated just what use it plans to make of these later speeches. Without the planned use before the court, it is, of course, impossible to determine whether it is fair. Appellant's prayer for relief below indicates, however, that it wants to be able to use these speeches "either in full or in part, in book form or otherwise." Insofar as that prayer asks for a declaration that the doctrine of fair use will justify publication as a book of verbatim copies of some of these speeches, the matter is put with sufficient definiteness to permit an answer. The publication of a work consisting in substantial part of quotations from another copyrighted work is not permitted under the theory of fair use.[34] If less than the whole text of the speeches is taken, the competitive effect of such a publication by the appellant on the similar work published in compliance with the Admiral's copyright would be a relevant factor.[35] The question as to the fair use of the addresses copyrighted

[34] See Folsom v. Marsh, 9 Fed. Cas. No. 4901, p. 342 (C.D. Mass. 1841); Toksvig v. Bruce Pub. Co., 181 F. 2d 664 (7th Cir. 1950); Yankwich, What is Fair Use?, 22 U. Chi. L. Rev. 203 (1954).

[35] See 56 Col. L. Rev. 585, 593, 597 (1956).

after December 1, 1958, is left to the District Court on remand.

The record shows that there are some of the addresses to which our holding may not be applicable. Copies of No. 23, Education—Our First Line of Defense, bore a copyright notice that is sufficient to protect it from use by others under § 10 of the Act. Nos. 7, Nuclear Power—Challenge to Industry, and 12, Christopher Columbus, are said not to have been distributed to the public as the others were.

In these circumstances, we conclude it is better to reverse and remand to the District Court for further hearing and application of this opinion.

It is so ordered.

WASHINGTON, *Circuit Judge, dissenting:* I would affirm the judgment of the District Court. I do not believe that the dissemination of the 22 speeches delivered prior to December 1, 1958, was such as would defeat the author's common law right of first public tion. They were therefore not in the public domain when Admiral Rickover filed his application for registration of the speeches in compiled form under Section 12 of the Copyright Act, 17 U.S.C. § 12 (1958). Consequently, nothing in Section 8 of the Art could bar the validity of the copyright thus secured, both as to the compilation and as to the individual speeches contained in it.

It is clear that Admiral Rickover intended to foster the widest public dissemination of his words—as current news—for the sake of advancing his own views and programs. But I think that it is equally clear that he meant to preserve, and actually did preserve, the exclusive right to publish the speeches in compiled form after their immediate news value had passed away. Speeches of men in the forefront of public life are unique among literary products. Not only are they often works of considerable literary merit, but they may also be "news" of the first importance. As "news" they deserve the widest unfettered contemporaneous dissemination. Where, as here, an author seeks to advance this end by making copies of his speeches available to the press and other interested persons,

he is serving the public's interest as well as his own. But insofar as they have a commercial value as literary works after their immediate news importance has passed, they belong appropriately to their creator. The public interest in the news value of the author's work may cut across or postpone his rights; but that is not to say that it extinguishes them.[1]

In my judgment the rule which requires a publication to be "limited" to avoid forfeiture of property rights in the material published is wholly inapposite here.[2] There can be no limited publication of "news"; "news" as such is everyone's property. Compare *Chicago Record-Herald Co. v. Tribune Association*, 275 Fed. 797, 798 (7th Cir. 1921). But what remains, after the news value of the words has passed, should belong exclusively to the author, or his assignees. The people who will buy a compilation of Admiral Rickover's speeches, months and even years after they have been reported in the press, will do

---

[1] *Cf.* Atlantic Monthly Co. v. Post Publishing Co., 27 F. 2d 556 (D. Mass. 1928), dealing with a copyrighted magazine article which was also "political 'news' of the most important character," *id.* at 557. Such a copyright, in my view, should be no bar to bona fide contemporaneous quotation by the press, whether or not express permission to copy is given.

[2] This test is characteristically invoked where there has been a prepublication circulation of a literary or musical work for promotion purposes, *e.g.*, Hirshon v. United Artists Corp., 100 U.S. App. D.C. 217, 243 F. 2d 640 (1957); Ilyin v. Avon Publications, Inc., 144 F. Supp. 368 (S.D.N.Y. 1956). It is sometimes said that dissemination must be limited to some ascertained group or class, White v. Kimmell, 193 F. 2d 744 (9th Cir. 1952), but even this requirement has been subject to qualification. See Werckmeister v. American Lithographic Co., 134 Fed. 321 (2d Cir. 1904). It is evident from these cases, and others treating the same questions, that the notion of "limit" rests upon the assumption that it is within the power of the author to prevent any circulation of his work. When he permits some dissemination, it becomes pertinent to inquire into his motives, to examine the extent of the distribution, and to consider the character of the recipients. Dissemination which is deemed too widespread is punished by forfeiture. Such inquiries, in my view, are quite irrelevant in the case of a leading public official, whose pronouncements on public matters should have—and are intended to have—wide dissemination as news.

so because they prize the fruits of the author's intellectual and literary efforts. There is nothing in the law which would compel this court to deprive the creator of the right to reap financial benefits from these efforts because, at the time of their creation, they had the added virtue of being newsworthy events of immediate public concern. Nor is there anything in the law which compels us to attach such a consequence to acts taken by an author to communicate to members of the public that element in his works which is properly theirs. It is a very grave matter for a court to pronounce the forfeiture of an author's intellectual property. I cannot conclude that such a result is warranted here.

The plaintiff-appellant comes to the courts without having contributed one iota to the work it seeks to appropriate. It has not even gathered and compiled the speeches—on the contrary, it seeks to force Admiral Rickover to collect and present to it copies of all of them. This is a litigation which in its every aspect deserves to fail.

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1960

No 15,463

Civil 116-59

PUBLIC AFFAIRS ASSOCIATES, INC.,
t/a PUBLIC AFFAIRS PRESS, *Appellant*

v.

VICE ADMIRAL HYMAN G. RICKOVER, *Appellee*

Appeal from the United States District Court for the District of Columbia.

Before: Mr. Justice Reed, retired, and Washington and Danaher, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, reversed, and that this cause be, and it is hereby, remanded to the District Court for further hearing and application of the opinion of this Court.

It is further ordered by the Court that appellant herein recover from appellee its taxable costs on this appeal, and have execution therefor.

Per Mr. Justice Reed.

Dated: October 20, 1960

Separate dissenting opinion by Circuit Judge Washington.

Appendix C

PRESS RELEASE SAMPLES

FOR RELEASE AT 11:00 A.M. (PST)
THURSDAY, OCTOBER 27, 1955

Remarks Prepared by RADM H. G. Rickover, USN
Chief, Naval Reactors Branch
Division of Reactor Development
U. S. Atomic Energy Commission
and
Assistant Chief of the Bureau of Ships
for Nuclear Propulsion
Navy Department
For Delivery at Luncheon Sponsored by
The San Francisco Council of the Navy League,
The Chamber of Commerce, and
The Commercial Club
Merchants Exchange Building
San Francisco, California
October 27, 1955

NUCLEAR POWER AND THE NAVY

I appreciate this opportunity to talk to you on Theodore Roosevelt's birthday because he, more than any other man, helped to mold our Navy into a highly mechanized and effective instrument of national policy. In particular, he encouraged the Navy to convert from coal to oil. Although the use of oil as a fuel for our warships had been under consideration since 1866, it was not until his administration, and with his encouragement and support, that the final decision to change was made - a change almost as significant as the one from sail to coal.

Today our Navy is embarked on an even grater change - from oil to nuclear power. I don't believe this will take as long as it took to convert from sail to steam or from coal to oil. Unlike the earlier changes in which merchant shipping took the lead, the change to nuclear power began with a naval vessel.

AEC

UNITED STATES
ATOMIC ENERGY COMMISSION
Washington 25, D. C.

Tel. ST 3-8000
Ext. 307

FOR RELEASE AT 9:00 P.M. (EDT)
TUESDAY, MAY 14, 1957

Remarks Prepared by RADM H. G. Rickover, USN
Chief, Naval Reactors Branch
Division of Reactor Development
U. S. Atomic Energy Commission
and
Assistant Chief of the Bureau of Ships
for Nuclear Propulsion
Navy Department
For Delivery at Banquet of the
Annual Scientific Assembly of the
Minnesota State Medical Association
St. Paul, Minnesota
May 14, 1957

ENERGY RESOURCES AND OUR FUTURE

I am honored to be here tonight, though it is no easy thing, I assure you, for a layman to face up to an audience of physicians. A single one of you, sitting behind his desk, can be quite formidable.

My speech has no medical connotations. This may be a relief to you after the solid professional fare you have been absorbing. I should like to discuss a matter which will, I hope, be of interest to you as responsible citizens: the significance of energy resources in the shaping of our future.

Appendix D — LIST OF RESPONDENT'S SPEECHES
Issued As Official Press Releases

Metallurgy In Atomic Power *(Atomic Energy Commission)*	October 20, 1955
Nuclear Power and the Navy *(Defense Department)*	October 27, 1955
Engineering and Scientific Education *(Atomic Energy Commission)*	November 22, 1955
Lead Time and Military Strength *(Defense Department)*	January 12, 1956
Nuclear Power and the Navy *(Defense Department)*	August 16, 1956
The Education of Our Talented Children *(Atomic Energy Commission)*	November 20, 1956
Nuclear Power—Challenge to Industry *(Defense Department)*	January, 1957
The Challenge of Nuclear Power *(Defense Department)*	March 1, 1957
The Talented Mind *(Defense Department)*	March 11, 1957
Energy Resources and Our Future *(Atomic Energy Commission)*	May 14, 1957
The Naval Revolution *(Defense Department)*	September 14, 1957
Acceptance of International Communication Award *(Defense Department, announcement)*	October 12, 1957
The Balance Sheet on Education *(Atomic Energy Commission)*	November 22, 1957
Revolution at Sea *(Defense Department)*	December 5, 1957
Education in the Nuclear Age *(Atomic Energy Commission)*	December 6, 1957
European and American Secondary Schools *(Atomic Energy Commission)*	March 23, 1958
The Truth Shall Make You Free *(Atomic Energy Commission)*	April 19, 1958
The Meaning of Your Profession *(Atomic Energy Commission)*	June 14, 1958
Investment in Human Resources *(Atomic Energy Commission)*	September 25, 1958
The Meaning of the Nautilus' Polar Voyage *(Atomic Energy Commission)*	September 29, 1958

APPENDIX D — CONTINUED

A Common Heritage *(Atomic Energy Commission)*	October 23, 1958
Theodore Roosevelt—Modern American *(Atomic Energy Commission)*	October 27, 1958
Education: Our First Line of National Defense *(Press release of speech at Harvard Club of New York)*	December 11, 1958
Democracy and Competence *(Press release of speech at North Carolina State College)*	February 17, 1959
Illusions Cost Too Much *(Press release of speech before Yale Club of Washington, D.C.)*	March 16, 1959
The Shippingport Atomic Power Station: Lessons From Its Operation *(Press release of speech before American Public Power Ass'n.)*	May 28, 1959

(Note: The last four speeches were issued by Admiral Rickover.)

Appendix E
U. S. ARMY COPYRIGHTING PRACTICE

UNITED STATES ARMY IN WORLD WAR II

The War in the Pacific

VICTORY IN PAPUA

by

Samuel Milner

OFFICE OF THE CHIEF OF MILITARY HISTORY
DEPARTMENT OF THE ARMY
WASHINGTON, D. C., 1957

Title page of one of the official military histories printed by the Government Printing Office under copyright of Army officers.

Copyright 1957 by R. W. Stephens

All rights in this book are reserved. This book or any part thereof may not be reproduced without written authorization from: The Chief of Military History, Department of the Army, Washington 25, D. C.

Library of Congress Catalog Card Number: 56-60004

For sale by the Superintendent of Documents, U. S. Government Printing Office
Washington 25, D. C.

This copyright notice appears in "Victory in Papua". R. W. Stephens was Assistant Chief of the Office of Military History.

Appendix F

OFFICIAL MILITARY HISTORIES COPYRIGHTED BY ARMY OFFICERS

All of these books were printed by the Government Printing Office and are available from the Superintendent of Documents. The official seal of the United States is imprinted on the cover of each. The copyright claimants had the rank of General and were Chief of the Office of Military History at about the period of copyright registration. However, the official status of the copyright claimants is not indicated in the copyright notices.

The Organization and Role of the Army Service Forces, by Joseph D. Millett. (1954, 494 pp., $4.25). Copyrighted by Albert C. Smith.

The Fall of the Philippines, by Louis Morton. (1953, 626 pp., $5.25). Copyrighted by Orlando Ward.

Victory in Papua, by Samuel Milner. (1957, 409 pp., $6.00). Copyrighted by R. W. Stephens.

Seizure of the Gilberts and Marshalls, by Philip A. Crowl and Edmund G. Love. (1955, 414 pp., $5.75). Copyrighted by Albert C. Smith.

The Approach to the Philippines, by Robert Ross Smith. (1953, 623 pp., $6.25). Copyrighted by Orlando Ward.

Northwest Africa: Seizing the Initiative in the West, by George F. Howe. (1957, 748 pp., $7.75). Copyrighted by Richard W. Stephens.

The Lorraine Campaign, by H. M. Cole. (1950, 657 pp., $11.00). Copyrighted by Orlando Ward.

The Supreme Command, by Forrest C. Pogue. (1954, 607 pp., $6.50). Copyrighted by Albert C. Smith.

Logistical Support of the Armies, Vol. I (May 1941-September 1944) by Roland G. Ruppenthal. (1953, 616 pp., $4.50). Copyrighted by Orlando Ward.

Logistical Support of the Armies, Vol. II (September 1944-May 1945) by Roland G. Ruppenthal. (1959, 540, 540 pp., $4.50). Copyrighted by R. W. Stephens.

Time Runs Out in CBI, by Charles F. Romanus and Riley Sunderland. (1959, 428 pp.) Copyrighted by Richard W. Stephens.

Rearming the French, by Marcel Vigneras. (1957, 444 pp., $4.25). Copyrighted by John H. Stokes.

Chief of Staff: Prewar Plans and Preparations, by Mark Skinner Watson. (1950, 551 pp., $4.25). Copyrighted by Orlando Ward.

Washington Command Post: The Operations Division, by Ray S. Cline. (1951, 413 pp., $3.75). Copyrighted by Orlando Ward.

Strategic Planning for Coalition Warfare, by Maurice Matloff and Edwin M. Snell. (1953, 454 pp., $3.75). Copyrighted by Orlando Ward.

Global Logistics and Strategy, by Richard M. Leighton and Robert W. Coakley. (1955, 730 pp., $6.25). Copyrighted by Albert C. Smith.

The Army and Economic Mobilization, by R. Elberton Smith. (1958, 749 pp., $5.25). Copyrighted by Richard W. Stephens.

Guadalcanal: The First Offensive, by John Miller, Jr. (1949, 113 pp., $1.00). Copyrighted by Orlando Ward.

Cross-Channel Attack, by Gordon A. Harrison. (1951, 519 pp., $6.75). Copyrighted by Orlando Ward.

The Persian Corridor and Aid to Russia, by T. H. Vail Motter. (1952, 545 pp., $4.00). Copyrighted by Orlando Ward.

Stilwell's Mission to China, by Charles F. Romanus and Riley Sunderland. (1953, 441 pp., $5.50). Copyrighted by Orlando Ward.

Stilwell's Command Problems, by Charles F. Romanus and Riley Sunderland. (1956, 518 pp., $6.25). Copyrighted by Albert C. Smith.

The Signal Corps, by Dulany Terrett. (1956, 383 pp., $3.50). Copyrighted by Albert C. Smith.

The Transportation Corps: Responsibilities Organization, and Operations, by Chester Wardlow. (1951, 454 pp., $3.75). Copyrighted by Orlando Ward.

Three Battles: Arnaville, Altuzzo, and Schmidt, by Charles B. MacDonald and Sidney T. Mathews. (1952, 443 pp., $4.50). Copyrighted by Orlando Ward.

The Women's Army Corps, by Mattie E. Treadwell. (1954, 841 pp., $6.25). Copyrighted by Orlando Ward.

The Quartermaster Corps: Organization, Supply, and Service, Vol. I, by Erna Risch. (1953, 418 pp., $3.75). Copyrighted by Orlando Ward.

Command Decisions, Kent Roberts Greenfield, editor. Listed as an official work in "Publications of the Office, Chief of Military History, Department of the Army". Copyrighted by Harcourt, Brace and Company in 1959. Mr. Greenfield was Chief Army Historian in 1959.

Appendix G

PUBLICATIONS OF U. S. NAVAL INSTITUTE

How to Survive on Land and Sea, by Office of Chief of Naval Operations, U.S. Navy. (Copyrighted 1943 and 1951 by the U.S. Naval Institute, 366 pp., $4.00).

Air Operations in Naval Warfare, edited by Commander Walter C. Blattmann, USN. (1957, 192 pp., $2.00).

The Bluejacket's Manual, U.S. Navy, by Captain J. V. Noel, Jr., USN. (Fifteenth edition, 1957; reprinted 1959, 643 pp., $1.95).

The Coast Guardsman's Manual, by Captain W. C. Hogan, USCG. (Revised by Lieutenant Commander M. M. Dickinson, USCG, assisted by Loran W. Behrens, BMC, USN-FR.) (Third edition, 1958, 830 pp., $4.00).

Division Officer's Guide, by Captain J. V. Noel, Jr. (Fourth edition, 1959, 304 pp., $2.25).

Elementary Seamanship, prepared by Lieutenant Commander Maurice C. Hartle, USN, Lieutenant Charles M. Lake, USN, Lieutenant Harry P. Maders, USN, and J. J. Metzger, BMC, USN. (1958, 92 pp., $2.00).

Elements of Applied Thermodynamics, by Captain W. A. Brockett, USN and R. M. Johnston, and A. E. Bock. (Third revised edition, 1953, 196 pp., $5.00).

Fundamentals of Construction and Stability of Naval Ships, by Thomas C. Gilmer, U.S. Naval Academy. (Second edition, 1959, 370 pp., $5.50).

International Law for Naval Officers, by Commander C. C. Soule, USN and Lieutenant Commander C. McCauley, USN. (Revised by Lieutenant Commander C. J. Bright, USN, 245 pp., $2.00).

International Law for Seagoing Officers, by Commander Burdick H. Brittin, USN. (1956, 256 pp., $4.50).

Logarithmic and Trigonometric Tables, by the Department of Mathematics, U.S. Naval Academy. (Reprinted 1959, 93 pp., $1.65).

Military Law, compiled by Captain J. K. Taussig, Jr., USN and Commander H. B. Sweitzer, USN. (Revised by Commander M. E. Wolfe, USN, and Lieutenant Commander R. I. Culick, USN, Reprinted 1959, 90 pp., $2.00).

Naval Leadership, prepared at the U.S. Naval Academy for instruction of midshipmen. (1949, 324 pp., $3.00).

Naval Shiphandling, by Commander R. S. Crenshaw, Jr., USN, aided by officers of the Navy, Coast Guard, Merchant Marine and Pilot Service. (1955, 396 pp., $4.50).

Appendix H
U. S. AIR FORCE COPYRIGHTING PRACTICE

The Historical Division of the Army Air Forces has assembled in seven volumes the record of the AAF in World War II.

It has won world-wide acclaim as the definitive history of American air strategy and operations during the war years. With the publication of this seventh and final volume, *Services around the World*, this monumental project is now complete.

Volumes in this series are:

I. PLANS AND EARLY OPERATIONS (January 1939 to August 1942)

II. EUROPE: TORCH TO POINT-BLANK (August 1942 to December 1943)

III. EUROPE: ARGUMENT TO V-E DAY (January 1944 to May 1945)

IV. THE PACIFIC: GUADALCANAL TO SAIPAN (August 1942 to July 1944)

V. THE PACIFIC: MATTERHORN TO NAGASAKI (June 1944 to August 1945)

VI. MEN AND PLANES

VII. SERVICES AROUND THE WORLD

(Reproduction of authorized announcement.)

Appendix I

COPYRIGHTING PRACTICE IN ATOMIC ENERGY

Atomic Energy for Military Purposes

The Official Report
on the Development of the Atomic Bomb
under the Auspices
of the United States Government,
1940–1945

By HENRY DeWOLF SMYTH
CHAIRMAN, DEPARTMENT OF PHYSICS
PRINCETON UNIVERSITY
CONSULTANT, MANHATTAN DISTRICT, U.S. ENGINEERS

Written at the request of
MAJ. GEN. L. R. GROVES, U.S.A.

PRINCETON
PRINCETON UNIVERSITY PRESS
1946

Appendix J

ATOMIC ENERGY COMMISSION'S COPYRIGHTING PRACTICES

PRINCIPLES OF NUCLEAR REACTOR ENGINEERING

RADIATION PROTECTION

► Radiation Hazards and Health Physics: Biological Effects of Radiation; Radiation Dose Units; Standards of Biological Protection; Protection of Personnel; Radioactive Waste Disposal; Problems.

SHIELDING OF NUCLEAR REACTOR SYSTEMS

► Reactor Shielding Problems; Shielding Geometry; Shielding of Gamma-Ray Sources; Design of Reactor Shields; Appendix; Problems.

THERMAL ASPECTS OF NUCLEAR REACTOR SYSTEMS

► Thermal Problems in Reactor Design; Design of Cooling System; Heat Sources in Reactor Systems; Heat Transmission by Conduction and Convection; Heat Transmission in Systems with Internal Sources; Temperature Distribution Along Path of Reactor Coolant; Heat Transfer Properties of Fluids; Comparison of Heat-Transfer Properties of Coolants; Pressure Drops and Pumping Power in Coolant Systems; Heat Transfer to Boiling Liquid; Thermal Stresses in Reactor Components; Problems.

NUCLEAR REACTOR DESIGN VARIABLES

► Main Aspects of Reactor Design; Reactor Experiments; Research Reactors; Production Reactors or Converters; Power Reactors; The Nuclear System; Reactor Components; The Heat-Removal System; Preliminary Design Calculations; Economic Aspects of Nuclear Power; Problems.

DESCRIPTIONS OF NUCLEAR REACTORS

► Introduction.

TABLES
INDEX

THE FIRST COMPLETE REACTOR ENGINEERING REFERENCE BOOK

offered by the U.S. Atomic Energy Commission – contains many fully worked examples to illustrate the application of equations and formulas derived in the book – a substantial number of problems allow you to test your understanding – useful conversion factors and the physical properties of many materials required in reactor construction are contained in the Appendix.

EXAMINE THIS BOOK FREE!

TAKE ADVANTAGE *of this opportunity to see for yourself how this book can help you in your professional activities, what impact nuclear energy will have for you in the future. Mail the No-Risk Order Form now and we will be glad to send you a copy of this book on approval for ten days' examination – there is no more important book today that will have such a bearing on your career and livelihood as this broad reference.*

870 Pages **Cloth** **6 x 9** **Illustrated** **$7.95**

D. VAN NOSTRAND COMPANY, INC.
Scientific Publishers Since 1848
250 FOURTH AVENUE — **NEW YORK 3, N. Y.**

Appendix K

CONGRESSIONAL COPYRIGHTING PRACTICES

85th Congress
2d Session

COMMITTEE PRINT

SPACE HANDBOOK:
ASTRONAUTICS AND ITS APPLICATIONS

STAFF REPORT
OF THE
SELECT COMMITTEE
ON
ASTRONAUTICS AND SPACE EXPLORATION

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1959